WILDER,[1] ASSESSOR, *v.* INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

No. 30. Submitted October 22, 1908.—Decided November 30, 1908.

Section 4536, Rev. Stat., providing that seamen's wages shall not be subject to attachment or arrestment, is to be construed in the light of other provisions of the same title and is to be liberally interpreted with a view to protect the seamen; and, as so construed, that section prevents the seizure of wages not only by attachment before, but execution after, judgment, and such wages cannot be seized under § 2118 of the Laws of Hawaii.

Quære and not decided whether the act of June 9, 1874, c. 259, 18 Stat. 64, repealed § 4536, Rev. Stat., so far as vessels engaged in the coastwise trade are concerned.

17 Hawaii, 416, affirmed.

THE facts are stated in the opinion.

[1] Substituted for Holt, Assessor.

the debt shall be established. And as Mr. Justice Alvey says, in delivering the opinion of the Supreme Court of Maryland, *Thomson* v. *Baltimore and Susquehanna Steam Co.*, 33 Maryland, 312, 318:

"An attachment has but few of the attributes of an execution; the execution contemplated by the statute being the judicial process for obtaining the debt or damage recovered by judgment, and final in its character, while the attachment is but *mesne* process, liable at any time to be dissolved, and the judgment upon which may or may not affect the property seized."

"Arrestment," a word derived from the English statute, is a word of Scotch origin, and derived from the Scottish law, and thus defined by Bouvier:

"The order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. Erskine, Inst. 3, 6, 1; 1, 2, 12. Where arrestment proceeds on a depending action it may be loosed by the common debtor's giving security to the arrester for his debt, in the event it shall be found due."

And in the Century Dictionary it is defined to be:

"A process by which a creditor may attach money or movable property which a third person holds for behoof of his debtor. It bears a general resemblance to foreign attachment by the custom of London."

Neither of the words used in the statute, "attachment" or "arrestment," considered literally, have reference to executions or proceedings in aid of execution to subject property to the payment of judgments, but refer, as we have seen, to the process of holding property to abide the judgment. But we are of opinion that this statute is not to be too narrowly construed, but rather to be liberally interpreted with a view to affecting the protection intended to be extended to a class of persons whose improvidence and prodigality have led to legislative provisions in their favor, and which has made them,

as Mr. Justice Story declared, "the wards of the admiralty." *Harden* v. *Gordon*, 2 Mason, 541.

We think too that the section is to be construed in the light of and in connection with the other provisions of the Title, of which it is a part. And we may notice that after providing against attachment or arrestment of wages, this very section goes on to enact that payment of wages to seamen shall be valid, notwithstanding any previous sale or assignment, or any attachment, incumbrance, or arrestment thereon; and that no assignment or sale of wages made prior to the accruing thereof shall bind the party making the same, except such advance securities as are authorized by this statute. When we look to the provisions of the Title we see that the field of "advanced securities" for which assignment is authorized is very narrow indeed. 3 United States Compiled Statutes, §§ 3079 *et seq.* It is made unlawful to pay any seaman his wages in advance, and an allotment of his wages is permitted only to grandparents, parents, wives, or children, or, under regulations of the Commissioner of Navigation, made with the approval of the Secretary of the Treasury, not to exceed one month's wages to a creditor in liquidation of a just debt for board or clothing. And it is provided that no allotment note shall be valid unless signed and approved by the shipping commissioner. This statute has been held a valid enactment (*Patterson* v. *Bark Eudora*, 190 U. S. 169) as to advancements.

Section 4536, therefore, has the effect of not only securing the wages of the seaman from direct attachment or arrestment, but further prevents the assignment or sale of his wages, except in the limited cases we have mentioned, and makes the payment of such wages valid notwithstanding any "attachment, incumbrance or arrestment thereon."

It seems to be clearly inferable from these provisions that wages which have thus been carefully conserved to the seaman were not intended to be subject to seizure by attachment, either before or after judgment.

Furthermore, there are other sections in the Title which

strongly support the conclusion that it was not intended that seamen's wages should be seized upon execution or attachment to collect judgments rendered at common law. Section 4535 provides that no seaman shall forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages by an agreement other than is provided for by this Title "Loss of lien." 3 U. S. Comp. Stat. § 3082. Section 4530 provides for the payment of seamen's wages, one-half at every port where such vessel shall load or deliver its cargo, and when the voyage is ended the remainder of his wages, as provided in § 4529. Section 4546 provides for the summons of the master when wages are unpaid within ten days to show cause why process should not issue against the vessel according to the rules of courts of admiralty. Section 4547 provides for process against a vessel in case a seaman's wages are not paid, or the master does not show that the same are otherwise "satisfied or forfeited," and all the seamen having like cause of complaint may be joined as complainants in a single action.

We think that these provisions, read in connection with § 4536, necessitate the conclusion that it was intended not only to prevent the seaman from disposing of his wages by assignments or otherwise, but to preclude the right to compel a forced assignment, by garnishee or other similar process, which would interfere with the remedy in admiralty for the recovery of his wages by condemnation of the ship. These provisions would be defeated if the seaman's wages, to be recovered at the end of the voyage, could be at once seized by an execution or attachment after judgment in an action at law. The evident purpose of the Federal statutes, that the seaman shall have his remedy in admiralty, would be defeated, and the seaman, in many cases, be turned ashore with nothing in his pocket, because of judgments seizing his wages, rendered, it may be, upon improvident contracts, from which it was the design and very purpose of the admiralty law to afford him protection.

"Ordinarily," says Judge Nelson, in *Ross* v. *Bourne*, 14

Fed. Rep. 862, *supra*, "the sailor's only means of subsistence on shore are his wages earned at sea. If these may be stopped by an attachment suit the instant his ship is moored to the wharf, a new hardship is added to a vocation already subject to its full share of the ills of life."

We think that § 4536, construed in the light of the other provisions of the same Title, prevents the seizure of the seaman's wages, not only by writs of attachment issued before judgment, but extends the like protection from proceedings in aid of execution, or writs of attachments, such as are authorized by the Hawaiian statutes, after judgment.

Finding no error in the decision of the Supreme Court of Hawaii, the same is

Affirmed.